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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Review of the Commission's Rules Governing the Low Power Television Service

MM Docket No. 93-114
RM-7772

COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. The Community Broadcasters Association ("CBA") hereby submits these comments in response to the Commission's Notice of Proposed Rule Making ("Notice") in the above-captioned proceeding, FCC 93-187, released April 22, 1993. CBA is a trade association representing the nation's LPTV stations. It regularly participates in legislative and administrative proceedings to keep the Commission informed about the activities of the LPTV industry and to urge the adoption of regulatory reforms to help the LPTV industry grow, prosper, and better serve the public.

2. CBA warmly welcomes this proceeding. The LPTV service has grown dramatically over the past several years and continues to grow rapidly. There are almost as many authorized LPTV stations today as there are full power stations.^{1/} This growth has occurred despite numerous serious obstacles including

areas than full-power stations, no cable must-carry rights,
limited times when applications may be filed, a restriction on
new applications within 100 miles of a station which

5. The chief benefit of the letter perfect standard has been the smooth functioning of the LPTV application process. Some applicants have fallen by the wayside, but the majority have enjoyed more efficient and timely processing service. It is now time, however, to grant relief to those who would otherwise fall by the wayside. Some of the disadvantages of the letter perfect standard are:

a. Some legitimate and earnest applicants have been dismayed to find their applications dismissed. Dismissal without prejudice of an LPTV application has harsher results than dismissal of applications in other mass media services, because the LPTV applications may not be re-filed until a new filing window opens. Because there has been only one filing window a year since 1989, dismissal has left applicants out in the cold for a year or more.^{3/}

b. The letter perfect standard has imposed significant costs on LPTV applicants. Professional consultants, including attorneys and engineers, have had no choice but to review and re-review every application multiple times, for fear of potential liability if they make even a very slight technical error. Time translates into fees, so the repeated extra reviews have significantly increased the cost of professional assistance in preparing applications.^{4/}

^{3/} In contrast, an FM broadcast application dismissed under the "hard look" standard may be re-filed soon after dismissal, unless it is mutually exclusive with a previously cut-off application.

^{4/} CBA's counsel estimates that the "letter perfect" standard increased legal fees for LPTV applications by as much as 50-75% when it was adopted.

c. The letter perfect standard has significantly delayed the initiation of service by some LPTV stations, because of the requirement to wait for another filing window before re-filing a major change that is needed before operations may begin. For example, if a transmitter site is suddenly lost, and authorization for a new site cannot be obtained without a major change, one slip in the application can cost a year's wait before the station can actually be constructed.

6. If these disadvantages can be avoided without bogging down the processing line, then the letter perfect standard should be relaxed, as proposed in the Notice. CBA suggests adoption of the "substantially complete" standard, because it already exists in other contexts, and there is case law interpreting it. To adopt a hybrid standard, somewhere in between letter perfect and substantially complete, would lead to challenges to application of the new standard which would likely take more time to resolve than the time needed to process the few additional applications that would pass the substantially complete test but fail a hybrid test.

7. Likewise, CBA supports the Commission's proposal to allow reliance on terrain shielding in more circumstances than "singleton" applications. The terrain-shielding rule recognizes reality and avoids elevating theoretical calculations over what everyone knows is factually more correct. Since the theory is constructed to mimic reality, subject only to the confines of practicality and simplicity in administration, it makes sense for the Commission's actions to reflect reality as much as possible.

Television signals do not penetrate mountains. Thus the Commission should not assume that they do so any more than is absolutely necessary, and terrain-shielding showings should be accepted to the maximum extent practicable.^{5/}

Modification of Facilities

8. CBA also heartily supports a relaxation of the definition of "major change," so that more applications for changes in existing stations may be processed as minor changes. The major/minor change distinction has been vexatious for the LPTV industry, as discussed at par. 5(c), supra. Unforeseen circumstances during the construction process cannot be completely avoided, especially given the vagaries of landlord-tenant relations in the tower leasing business. LPTV permittees who are ready, willing, and able to go on the air are often frustrated by the need to wait for a filing window before being able to apply for a change and find themselves forced to remain dark until the window comes.

9. Even if the Commission opens more filing windows, there will be important advantages to relaxing the definition of minor change to allow more applications to qualify. Because of the number of applications filed during each window, it takes several months for those applications to be processed and granted. Minor change applications are normally processed and granted much more quickly, because their filing is distributed over time. Also, it is possible to plead for expedited action for a minor change when

^{5/} Likewise, amendments which eliminate interference and/or eliminate mutual exclusivity should be accepted to the maximum extent practicable, because such a policy allows more service to be provided to the public.

circumstances justify it, such as when a station is really ready to go on the air and needs only a minor adjustment of its operating parameters before it may begin service. Finally, allowing more changes to be classified as minor would give existing stations more certainty that their applications will be granted, because the applications are cut-off on the day filed and are not subject to lotteries or mutual-exclusivity conflicts with later-filed applications. Thus, as the Commission has proposed, the definitions of major and minor change should be altered to allow more changes to be classified as minor.

10. CBA believes that the Commission's proposed definition-al change -- allowing a station's service area to be expanded up to a circle, the diameter of which is the reach of a station's largest directional lobe -- should have an additional component to accommodate those stations which operate with omnidirectional antennas and stations which are forced to move their transmitter site in the same direction as their major lobe. The Commission's proposal would afford no relief at all for an omnidirectional station; so to some extent, it would encourage directional antenna proposals which may otherwise be unnecessary, for the purpose of preserving future flexibility to change. CBA suggests that in addition to the Commission's proposal, an extension of the station's protected contour be permitted to qualify as a minor change up to ten percent, or perhaps a distance of up to five kilometers, in any direction.^{6/}

^{6/} There is precedent for some flexibility in contour extension in Section 73.3572(a)(2) of the Rules governing displacement applications. If a uniform circular expansion of the suggested
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Call Signs

11. Adoption of the proposal to permit LPTV stations to operate with four-letter call signs is critical to the industry. It is that simple.

12. LPTV stations provide television service to the public. LPTV walks like a TV station and talks like a TV station, but it is not called a TV station when it must use a call sign that is not familiar to the public. The present system generates confusion in the eyes of the public:

a. Even if viewers recognize and are willing and able to write down an unfamiliar call sign format comprised of a letter/number combination, audience ratings organizations do not recognize the LPTV format properly in their computers. LPTV stations already have difficulty with ratings services that report only on a market-wide basis when the LPTV signal covers only part of the market.^{7/} The present call sign format imposes an even greater burden than LPTV stations otherwise bear because of their limited power.

b. Program suppliers do not recognize the strange call sign and do not want to sell their product to something they do not understand.

^{6/}(...continued)

degree is deemed excessive, a further limit could be imposed in the form of a maximum percentage increase in the overall area within the station's protected contour.

^{7/} An LPTV station may have a huge 50% share of the audience in a small segment of a geographically large market, yet be reported as having only a negligible audience share in a market-wide report.

c. Advertising agencies cannot accommodate three letters and two numbers in their computers, so they are restrained from placing or processing orders for advertising time on LPTV stations.

13. There is no reason to perpetuate this confusion and inequity any longer. LPTV stations should be permitted^{8/} to apply for four-letter^{9/} call signs at an early date.^{10/}

14. CBA agrees with the proposal at Paragraph 23 of the Notice that normal call sign assignment procedures be applied to LPTV stations, but it disagrees with the proposal at Paragraph 25 that an LPTV station not be permitted to apply for a four-letter call sign until it applies for its initial license to cover construction permit. That restriction would deprive LPTV stations of being certain of securing their desired four-letter call sign during the important publicity and promotion period prior to initial sign-on.^{11/} CBA suggests two alternatives:

^{8/} As suggested in the Notice, to conserve resources, four-letter call signs would be optional and assigned only to stations which request them. CBA supports this aspect of the proposal.

^{9/} LPTV stations should also be permitted to have six-letter call signs with the "-TV" suffix, since that will permit them to share call signs used by radio broadcast stations with the consent of the radio broadcaster who used the call sign first.

^{10/} In RM-7772, CBA suggested that four-letter call signs be available only to LPTV stations meeting certain programming and engineering requirements. The Commission appears reluctant to make those distinctions. CBA has no objection to four-letter call signs being made available to all stations licensed as LPTV stations which request them.

^{11/} Because of the first-come, first-served call sign rule, an LPTV station could promote a particular call sign only to find it taken away by a station filing a request at the last minute before the LPTV filed for its initial license. In a sinister
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a. The preferred alternative is that an LPTV station may apply for a four-letter call sign any time after issuance of its initial construction permit; or

b. An LPTV station may apply for a four-letter call sign at any time after issuance of its initial construction permit if the request is accompanied by a certification that a firm equipment order has been placed or physical construction is under way at the transmitter site.

15. The proposal to require a special "-LP" suffix on LPTV call signs is, to put it simply, a very bad idea. As noted above, the difference between full power and low power call signs causes considerable confusion today on both the consumer and the professional levels. Perpetuating the distinction, albeit in a different form, will only perpetuate the confusion. To the consumer, television is television, and the service should be

Conclusion

16. CBA again thanks the Commission for its attention to the needs of the LPTV industry and urges that the proposals in